

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)
ex rel. Oberg,)
Plaintiff,)
v.) CIVIL NO.1:07-cv-960-JFA
NELNET, INC., et al.,)
Defendants.)

UNITED STATES' STATEMENT REGARDING
STATUS OF SETTLEMENT REVIEW PROCESS

The United States submits this statement in advance of the status hearing scheduled for October 1, 2010, in order to apprise the Court of the settlement status including the Government's review of the proposed settlements in this case.

The settlement now includes Panhandle Plains Higher Education Authority. Thus, the settlement has been processed to include all active defendants. Also, the Government and Relator have reached a tentative agreement on Relator's share of the proposed settlement amounts under 31 U.S.C. § 3730(d)(2), and the parties and the Relator have also resolved claims for attorney fees under 31 U.S.C. § 3730(d)(4). These issues had not been resolved at the time of the mediation.

As to the terms of the proposed settlements between Relator and the Defendants, Government counsel has obtained an official recommendation from the Department of Education, the U.S. Attorney's Office for the Eastern District of Virginia, and the Director,

-2-

Commercial Litigation Branch, U.S. Department of Justice. However, further approval is required. Under Department of Justice (“Department”) regulations, the official with decision-making authority for the Department with regard to this settlement is the Associate Attorney General, the third-ranking official within the Department. Undersigned counsel is still in the process of obtaining the decision from that office, which has been apprised of the time frame set by the Court. Government counsel has been working diligently to secure that decision, but the amount of ongoing business at the higher supervisory levels of Department has been such that it has not been possible to secure action on the settlements in this case at of today, and the undersigned are not certain about a decision by October 1. Authority to consent to these settlements as to each Defendant has been requested as a group, thus the Government is awaiting one omnibus decision, rather than separate decisions as to each Defendant.

The Department sought internal approval for Relator’s share separately, so that the process of reaching agreement on the Relator’s share amount would not delay the approval process for the overall settlement. An official recommendation regarding the Relator’s share from the U.S. Attorney’s Office for the Eastern District of Virginia has already been obtained.

Government counsel is preparing to circulate the final draft agreements containing the terms and conditions required by the Department in False Claims Act settlements. Preliminary drafts have been circulated between the parties and the government, and it appears that the terms and conditions contained in those agreements are acceptable to the parties. The settlement agreement will include a provision for the filing of a Stipulation of Dismissal shortly after consummation of the settlement.

- 3 -

The Government respectfully requests that the stay of this matter be continued to a date after October 15. We are hopeful that the necessary approvals for this process can be obtained by October 15.

The Government has provided this status report to all parties, and the Government understands that the parties consent to an extension of time to obtain the required approval.

Dated: September 29, 2010

Respectfully submitted,

TONY WEST
Assistant Attorney General
Civil Division

NEIL H. MACBRIDE
United States Attorney

By: _____/s/_____
Jay D. Majors
Joyce R. Branda
Renée Brooker
Department of Justice
Civil Division
counsel for the United States
Post Office Box 261
Ben Franklin Station
Washington, DC 20044
Tel: (202) 307-0264
Fax: (202) 514-0280
Jay.Majors@usdoj.gov

- 4 -

By: _____/s/ _____
Gerard Mene
Assistant U.S. Attorney
counsel for the United States
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3777
Fax: (703) 299-2584
Gerard.Mene@usdoj.gov

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on the 29th day of September, 2010, I electronically filed the foregoing UNITED STATES' STATEMENT REGARDING STATUS OF SETTLEMENT REVIEW PROCESS using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

/s/
Gerard Mene
Assistant U.S. Attorney
counsel for the United States
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3777
Fax: (703) 299-2584
Gerard.Mene@usdoj.gov